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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Twentieth session

SUMMARY RECORD OF THE 22nd MEETING

Held at the Palais des Nations, Geneva,
on Monday, 10 May 1999, at 3 p.m.

Chairperson: Mrs. BONOAN-DANDAN

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GE.99-41825 (E)

The meeting was called to order at 3.10 p.m.

GENERAL DISCUSSION: "RIGHT TO EDUCATION (ARTICLES 13 AND 14 OF THE COVENANT)" AND "RIGHT TO FOOD (ARTICLE 11 (1) AND (2) OF THE COVENANT)" (agenda item 9) (continued) (in session documents with no symbols: draft general comment 11; two versions of draft general comment 12)

Adoption of draft general comment 11: "Plans of action for primary education (article 14 of the Covenant)" (continued)

1. The CHAIRPERSON said that the issue outstanding from the morning's meeting was to finalize the wording of paragraph 3 of draft general comment 11 before adopting that document. She invited Mr. Pillay to read out the revised version of the paragraph in question.

2. Mr. PILLAY, having pointed out that Mr. Ceausu's suggestion had been incorporated into paragraph 1, said that there had been a suggestion to split paragraph 3 into two subparagraphs. In addition, the phrase "basic education" in the second sentence should be changed to "primary education". The sentence "These difficulties cannot, however, justify the non-submission of a plan of action, as provided for in article 14" should be replaced by the following: "These difficulties cannot, however, relieve the States parties from their obligation of submitting a plan of action, as provided for in article 14." The remaining text of the paragraph, from the words "the work of the Committee" onwards, could be put in a new subparagraph.

3. Mr. SADI said that paragraph 1 of the draft general comment needed to go beyond recognizing the right to compulsory education, by referring explicitly to States parties' obligation to make education available. In addition, the wording of the phrase "where it is even far from being implemented or realized" was unclear and that problem should be resolved before discussing paragraph 3.

4. The CHAIRPERSON pointed out that an alternative suggestion had been given for the wording of paragraph 1. Seeing that Mr. Sadi and Mr. Ceausu were in favour of using the alternative suggestion, she said she took it that paragraph 1 could be adopted as revised.

5. It was so agreed.

6. Mr. HUNT (Rapporteur) agreed with Mr. Pillay's suggestion to split paragraph 3 into two parts. However, he felt that it would be necessary to add an introduction to the new subparagraph (b) in order to make clear the link between the two subparagraphs. He proposed the following wording: "Plans of action prepared in accordance with article 14 are especially important because, as the work of the Committee has shown, the lack of educational opportunities for children often reinforces their subjection to various other human rights violations."

7. Mr. RIEDEL supported Mr. Hunt's suggestion and also proposed the following new wording for the third sentence of paragraph 3: "The Committee is fully aware that many diverse factors have made it difficult for States

parties to fulfil their obligation to provide a plan of action; for example, the structural adjustment programmes that began in the 1970s, the debt crises that followed in the 1980s and the financial crises of the late 1990s, as well as other factors, have greatly exacerbated the extent to which the right to primary education is being denied on a wide scale." Such a formulation would make the sentence clearer and more readable.

8. The CHAIRPERSON read out the whole of paragraph 3 (a) as amended.

9. Mr. GRISSA suggested adding the word "about" in front of "130 million children" and also the words "of the Covenant on Economic, Social and Cultural Rights" after "article 14" at the end of subparagraph (a).

10. The CHAIRPERSON pointed out that the word "estimated" was included in the sentence in reference to the 130 million children, so adding the word "about" was unnecessary. However, she agreed to Mr. Grissa's other suggestion. She then read out paragraph 3 (b), incorporating the proposed amendments.

11. Mr. ATANGANA said that, instead of adopting the introductory passage proposed by Mr. Hunt at the beginning of paragraph 3 (b), the words "in this respect" inserted in front of "The work of the Committee" would be sufficient to maintain the link between the two subparagraphs without making the text too long.

12. Mr. RIEDEL said that, although Mr. Atangana's suggestion was stylistically preferable, the purpose of creating a separate subparagraph was to refocus attention not on the general problem of poverty and lack of educational facilities but on Governments' specific obligation to produce plans of action. Therefore the wording of the paragraph should be kept as revised.

13. The CHAIRPERSON said she took it that paragraph 3 could be adopted as revised and that the whole of draft general comment 11 could, therefore, be adopted.

14. It was so decided.

Draft general comment 12: "The right to adequate food (article 11 (1) and (2) of the Covenant)" (continued)

15. Mr. SADI, having thanked the representatives of the Food and Agriculture Organization (FAO) for their submissions, asked for FAO's definition of what constituted adequate food. Paragraph 12 of the draft general comment mentioned sufficient quantity and quality of food, but made no specific reference to those contaminants or pollutants, especially cancer-causing ones, which should be absent from food. The issue was particularly relevant to developing countries, where insecticides and pesticides were often abused and the water supply was often polluted. A clear idea was needed of what was meant by "adequate food", so that Governments would take it into account.

16. Mr. CEAUSU suggested first formulating a clear definition of food. Was drinking water to be considered part of food and was the Committee to be

concerned with drinking water and its safety? Also, in the context of adequate food and social security, did a person have the right to money for alcohol, coffee, vitamins and so on? It was necessary to define food clearly in the context of the right to adequate food, and that right could not be extended to other substances.

17. Mr. TEXIER said that paragraph 11 of the draft general comment more or less covered paragraph 9 of the version submitted by Professor Eide, where a fuller definition of adequate food was given which might answer Mr. Ceausu's question.

18. Mr. CEAUSU said that a specific reference should be made to drinking water because he had heard criticisms of the authorities in a certain developed country where water distribution had been privatized and prices had increased so much that people did not have enough money to buy it. Clearly, water should be treated not as a commodity but as an element essential to life; its importance in sustaining life should be emphasized, particularly in the light of water shortages, the need to share water and pollution of the water table.

19. Mr. SADI said that Mr. Ceausu was correct to raise the issue of water and wondered whether a separate general comment on water should be drawn up, since it was a broad subject which went beyond the individual needs of each person. In addition, the Committee had heard that many States parties had developed nutritional programmes to educate people on fat-free and fibre-rich foods, and such contemporary ideas should be added to the Committee's concept of adequate food. That concept should meet contemporary standards in terms of contamination, fibre and fat content, and so on. There were experts in that area whom the Committee should consult in drawing up its definition of adequate and healthy food.

20. Mr. ANTANOVICH said that the concerns raised by Mr. Ceausu and Mr. Sadi were legitimate ones; however, water was a subject separate from food, the main focus of the current discussion. He suggested defining "adequate food" as a sufficient quantity and quality of food to keep an individual in good health. In that way, a distinction could be drawn between the food an individual needed for health and the food he or she might wish to eat through personal choice.

21. Mr. WINDFUHR (FoodFirst Information and Action Network (FIAN)) said that paragraph 9 of Professor Eide's version of the draft general comment dealt with most of the problems which had been raised. Its formulation was based partly on the code of conduct on the right to adequate food drawn up by FIAN and agreed upon at its last expert meeting: "The core content of the right to adequate food implies the availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture." The text then went on to define "dietary needs", "free from adverse substances" and "cultural acceptability". The paragraph did not mention water explicitly but it was clear from the wording that it was included.

22. Mrs. JIMÉNEZ BUTRAGUEÑO, supporting Mr. Antanovich's comments, said that good food was necessary for good health. It was important to educate people

on eating properly so that they would develop the right eating habits from a young age.

23. Mr. MOORE (FAO), endorsing Mr. Windfuhr's comments, reiterated that the quality of food implied that it should be free from adverse substances. FAO and WHO had set standards on pollution levels in food and it would be useful to spell out similar standards in the general comment document. In addition, FAO considered that the right to food included the right to adequate safe drinking water.

24. Mr. SADI said he took it that Mr. Moore meant that those elements which should be absent from food should be specified, since the phrase "free from adverse substances" was open to subjective interpretation by different countries. Since science had established which elements should be absent from food, universal standards should be set for all countries in that regard.

25. The CHAIRPERSON suggested that the general debate be concluded and that the Committee move to a paragraph-by-paragraph analysis of the draft general comment, since the specific content of the document would provide a good basis for further debate.

26. Mr. HUNT, noting that the "Eide draft" was an accumulation of contributions from many people over a number of years, asked Mr. Texier and Mr. Windfuhr in what respects they considered the Eide draft to be deficient.

27. Mr. TEXIER felt they should start with the draft before them, essentially drawn up by FIAN, and include elements of Mr. Eide's draft. If the Committee preferred, they could work on Mr. Eide's draft, but they would probably would have to cut some of it out, since he had included broad human rights issues. There was nothing really lacking from the Eide draft; on the contrary it was perhaps too detailed, but it had the advantage of a logical sequence, and a separation between national and international obligations. There were lacunae in the other draft, for instance the framework law within national legislation. Many paragraphs were common to both, but the Eide draft was easier to follow since it had numbered paragraphs.

28. Mr. RIEDEL said that, when the issue was important as a general comment on article 11 which would shape the work of the Committee in the future, it was really important to have one composite draft on which to work. He felt that the Eide draft was neatly structured from a legal point of view, and also pointed out that it was normally easier to take a longer version and strike out the unnecessary passages. The Committee's draft was more policy-oriented, and aimed at promoting and facilitating. The Eide draft additionally had a violations approach, with differentiated levels of obligation, and also referred to framework legislation and points on monitoring. The headings were clear and it was set out in such a way that Governments should find it easy to follow. It already included observations by the FAO and FIAN, inter alia. As a lawyer, he would prefer to start with the Eide draft.

29. Mr. TEXIER said that another advantage of the Eide draft was that it came out of the Expert Group Meeting organized by the Office of the High Commissioner for Human Rights and FAO in November 1998, and took account of all the comments made there. The disadvantage was that it had not yet been

translated into all the languages of the Committee. There were some passages which needed to be cut out because it was overly long, but it was very convenient.

30. Mr. WINDFUHR (FIAN) said that the earlier Committee's draft had been shortened and reshuffled prior to translation and had thus lost its structure, which had previously been similar to that of the Eide draft, with contents, obligations, violations and implementation. The Committee's draft also spoke of the access of every individual to an income and dignity enabling him to feed himself, whereas the Eide draft spoke only of adequate food. The Maastricht guidelines usefully differentiated between violations of commission and violations of omission; that was a point which could usefully be amended, but the Eide draft was a good starting point.

31. Mr. MOORE (FAO) said it was the responsibility of the Committee to decide which draft should be used. There had been a rewarding discussion at the second consultation in November on the practical way forward for realization of the right to food as well as clarification of the content of the right to food, and the Eide draft did reflect nearly all of those points. He would be happy to use it as a basis.

32. The CHAIRPERSON said that comments on the draft general comment by the Sub-Committee on Nutrition (SCN) and other independent experts were also included, making the Eide draft fairly comprehensive, whence its length. Since the Eide draft was available only in English, it would be necessary to take it paragraph by paragraph, which would be a long-winded process. Perhaps the Committee could consult the original version and Mr. Texier could point out the similarities and differences prior to drafting a final version for adoption the following day.

33. Mr. RIEDEL said that although there were many points of similarity between the two drafts, they had different accents and different approaches. He therefore suggested forming a small working group with the representatives of FIAN and FAO and two or three Committee members, to prepare a composite draft.

34. Mr. SADI suggested that the Committee make general proposals prior to adjourning early to give time for the drafting process. The general comment would have to be adopted the following day in order to give the translators time to prepare the final version in all languages.

35. Mr. WIMER ZAMBRANO said there were two approaches possible in drawing up the general comment, the reductionist approach or the broad approach, which considered all possible aspects of the right. He personally would prefer the reductionist approach. By explanation, he gave the example of opposition to agricultural dumping. If the Committee allowed itself to go into too much detail, it would have to consider all types of agricultural policy and all the varieties of agricultural labour, of which there were many. Agriculture was one of the great unsolved problems of the age. Any transnational or large modern company could produce food much more cheaply than for instance the indigenous peoples of India or Latin America; the Committee could obviously not afford to start discussing the comparative rights and justice of different types of food production.

36. The CHAIRPERSON trusted that the working group would extract the most important points from both drafts so that the composite version would form a clear basis for the general comment.

37. Following a brief discussion, she announced that the meeting would be adjourned to enable the small working group to proceed with their task. She requested members to study the draft concluding observations on the Solomon Islands overnight to facilitate speedy finalization on the following day.

The meeting rose at 4.15 p.m.

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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Twentieth session

SUMMARY RECORD OF THE 23rd MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 11 May 1999, at 10 a.m.

Chairperson: Mrs. BONOAN-DANDAN

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DAY OF GENERAL DISCUSSION (agenda item 9) (continued)

Adoption of draft General Comment No. 12 "Right to adequate food" (continued)

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GE.99-41801 (E)

The meeting was called to order at 10 a.m.

DAY OF GENERAL DISCUSSION (agenda item 9) (continued)

Adoption of draft General Comment No. 12 "Right to adequate food" (continued)
(revised version available in English only)

1. The CHAIRPERSON invited Mr. Texier, who had been asked to prepare draft General Comment No. 12 "Right to adequate food", to comment on the text.

2. Mr. TEXIER said that the draft General Comment was the fruit of collaboration between the Committee and numerous experts from specialized institutions and non-governmental organizations (NGOs). He particularly wished to thank Mr. Windfuhr (FIAN - Foodfirst Information and Action Network) and Mr. Moore (United Nations Food and Agriculture Organization - FAO) for their contributions to the preparation of an important draft which had been requested by a wide range of bodies and organizations, including the Office of the High Commissioner for Human Rights, the FAO, the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities. In its revised version, available in English only, the draft began with general considerations, then examined the legal content of the right to adequate food and concluded with a discussion of the ensuing national and international obligations.

3. Mr. MOORE (FAO) said that the draft General Comment had the approval of the FAO and that its adoption would be a big step forward.

4. Mr. WINDFUHR (FIAN - Foodfirst Information and Action Network) said that the draft was broadly based on the code of conduct drawn up by several hundred NGOs and that its adoption would help to define the right to food and to clarify the resulting obligations.

5. The CHAIRPERSON invited Mr. Riedel to present the English version of the revised draft paragraph by paragraph.

Paragraph 1

6. Mr. GRISSA proposed that in the last sentence of the paragraph the words "the rights" be replaced by "this right".

7. Paragraph 1, as amended, was adopted.

Paragraph 2

8. Mr. ANTANOVICH suggested that the word "their" in front of "examination" be deleted from the first sentence of the paragraph.

9. Mr. GRISSA proposed the deletion of the article "a" after "only" in the second sentence.

10. Paragraph 2, as amended, was adopted.

Paragraph 3

11. The CHAIRPERSON suggested deleting the expression "through its chairperson" in the penultimate sentence, together with the last sentence of the paragraph.

12. Paragraph 3, as amended, was adopted.

Paragraph 4

13. Following a comment by Mr. WIMER, to which Mrs JIMÉNEZ BUTRAGUEÑO, Mr. SADI and Mr. RIEDEL subscribed, the CHAIRPERSON proposed that in the second sentence the wording following "other rights" in the second line of the paragraph be replaced by "enshrined in the Universal Bill of Human Rights".

14. Mr. AHMED proposed that the words "and indispensable for" be inserted in the second sentence after the expression "inseparable from".

15. Mr. ANTANOVICH suggested linking the first two sentences by adding the term "and".

16. Paragraph 4, as amended, was adopted.

Paragraph 5

17. Further to a comment by Mr. WIMER, the CHAIRPERSON proposed that in the second sentence the word "particularly" be replaced by "most of them".

18. Paragraph 5, as amended, was adopted.

Paragraph 6

19. Paragraph 6 was adopted.

Paragraph 7

20. Mr. CEAUSU considered the text rather abstract. It should be made simpler and more precise. In particular, the meaning of the expression "at all times" at the end of the second sentence, in the fifth line of the paragraph, should be clarified.

21. Mr. MOORE (FAO) proposed that "at all times" be replaced by "for the present and future generations".

22. Paragraph 7, as amended, was adopted, subject to minor editorial changes.

Paragraph 8

23. Mr. GRISSA proposed that the phrase "many persons with persistent medical problems, and the mentally ill" in the third line of the last sub-paragraph be replaced by "persons with health problems, including the mentally ill".

24. Paragraph 8, as amended, was adopted.

Paragraph 9

25. Mr. GRISSA proposed that the word "Nevertheless" at the beginning of the last sentence, fourth line, be deleted.

26. Paragraph 9, as amended, was adopted.

Paragraph 10

27. Mr. HUNT proposed that the words "natural or other disasters" be substituted for "natural or man-made disasters" in the last line.

28. Paragraph 10, as amended, was adopted, subject to minor editorial changes.

Paragraph 11

29. Mr. GRISSA noted that the paragraph referred to measures to be taken at different levels. It should be made clear what those levels were.

30. The CHAIRPERSON proposed that it be made clear that those were the different levels of obligations of States parties.

31. Mr. ANTANOVICH and Mr. TEXIER proposed that the last sentence in square brackets be deleted, particularly as the next two paragraphs explained the circumstances in which it was possible to speak of violation of the right to adequate food.

32. Paragraph 11, as amended, was adopted.

Paragraph 12

33. Paragraph 12 was adopted.

Paragraph 13

34. Mr. CEAUSU proposed that the paragraph be amended to make it clear that it was not only access to adequate food that could be the subject of discrimination but also the means and the rights to obtain it.

35. That proposal was accepted.

Paragraph 14

36. Mr. SADI said he was puzzled by the meaning of "active denial" in the third line. How was "active" to be understood?

37. Mr. WIMER noted that, in general, a bilateral agreement was entered into with another State and a multilateral agreement with international organizations. Consequently, there was no need to specify that those agreements were entered into "with other States or international organizations". Those words should be deleted.

38. Mr. RIEDEL supported that proposal and also suggested deleting the adjective "active" in the expression "active denial".

39. Paragraph 14 was adopted with those two amendments.

Paragraph 15

40. Mr. RIEDEL, Mr. GRISSA and Mr. WIMER proposed that the paragraph be deleted since the Committee should concern itself with the obligations of States and not of civil society, a term whose meaning was in any case rather vague.

41. Mr. MOORE (FAO), on the other hand, considered that deleting that paragraph would make the text unbalanced and proposed, as a compromise, that a new sentence reading "States parties should create a climate designed to facilitate the exercise of these responsibilities" be inserted after the first.

42. Mr. ANTANOVICH was also in favour of keeping the paragraph, but proposed that all references to ethics be deleted from the last sentence.

43. Paragraph 15 was adopted with those two amendments.

Paragraphs 16 to 21

44. Those paragraphs were adopted, subject to a few minor editorial changes.

Paragraph 22

45. Paragraph 22 was adopted.

Paragraph 23

46. Mr. SADI proposed the addition of the word "specially", since adequate food should be provided for all, but more especially for the most vulnerable.

47. Paragraph 23, as amended, was adopted.

Paragraphs 24 to 28

48. Paragraphs 24 to 28 were adopted.

Paragraph 29

49. Mr. PILLAY proposed the deletion of the words "bar associations" and "the legal community" which were already included in the formula "lawyers, judges and adjudicators".

50. Mr. WIMER ZAMBRANO asked for an explanation of the meaning of the word "adjudicators" in English.

51. Mr. RIEDEL proposed keeping only "lawyers, judges and adjudicators". He explained that the word "adjudicator" was used of anyone who, without being a judge, had responsibility for settling disputes (mediator, ombudsman, etc.).

52. At the end of a discussion in which Mr. SADI, Mr. CEAUSU and Mr. MOORE all participated, the CHAIRPERSON proposed that "adjudicators" be replaced by the expression "other members of the legal community" if, after verification, the term proved to have no direct equivalent in the Committee's other working languages.

53. Paragraph 29, as amended, was adopted, subject to the above-mentioned verification.

Paragraphs 30 and 31

54. Paragraphs 30 and 31 were adopted.

Paragraph 32

55. Mr. CEAUSU proposed that the words "conditions for food production and" be added at the end of the first line.

56. After a discussion in which Mr. PILLAY, Mr. SADI and the CHAIRPERSON participated, it was decided to substitute "recalls its position" for "affirms its convictions" in the third line.

57. Paragraph 32, as amended, was adopted.

Paragraph 33

58. Mr. SADI noted that the correct expression was "joint and several", not "joint and separate".

59. Paragraph 33, as amended, was adopted.

Paragraph 34

60. Paragraph 34 was adopted.

Paragraph 35

61. At the end of a discussion in which the CHAIRPERSON, Mr. ANTANOVICH, Mr. RIEDEL and Mr. SADI participated, it was decided to add a mention of UNDP, ILO and UNESCO after the reference to UNICEF in the sixth line.

62. Mr. CEAUSU proposed that the words "building on their respective expertise" (end of paragraph) be moved and placed after the word "effectively" in the penultimate line.

63. Paragraph 35, as amended, was adopted.

Paragraph 36

64. Paragraph 36 was adopted.

65. The draft General Comment as a whole, as amended, was adopted, subject to the verifications indicated and possible editorial corrections.

66. Mr. MOORE (FAO) congratulated the Committee on working so effectively. The adoption of a General Comment on the right to adequate food was the first concrete realization of one of the principal commitments made by global leaders at the 1996 World Food Summit. That document laid the foundations for the future work of the FAO and for cooperation between that organization and the Committee on Economic, Social and Cultural Rights. He hoped that the General Comment on the right to adequate food could be submitted to the next session of the Committee on Food Security at the end of May 1999.

67. Mr. SADI said that now that that important General Comment had been adopted, the question was how to make it operational. He wondered whether Mr. Moore and Mr. Windfuhr had any suggestions to make in that connection. Perhaps the FAO, in particular, could draw attention to the General Comment and incorporate it in its policies and objectives.

68. The CHAIRPERSON assured Mr. Moore that he would soon receive the final version of the document.

69. Mr. MOORE (FAO) said that the working relationship between the Committee on World Food Security and the Committee on Economic, Social and Cultural Rights was essential, and he invited the Committee to come to the next session of the Committee on World Food Security and present the General Comment itself.

The meeting rose at 12.55 p.m.